

**MICROSOFT'S PREDATORY PRACTICES AFTER THE JUNE 21, 1995
MEETING**

115. After Netscape refused Microsoft's offer to divide the browser market, I began hearing reports that Microsoft was directly interfering with Netscape's ability to license and distribute its browser software. Microsoft's interference took many forms. I will detail below some of the many reports I received concerning these matters. However, before setting out the details, I will summarize the general pattern of Microsoft's behavior, Microsoft's own statements that corroborated the reports I was receiving, forwarded documents that we received that originated from Microsoft and corroborated the reports I was receiving, and press accounts I was aware of that corroborated these reports. It must be stressed that Microsoft's comments to the press alone were significant. Specifically, Microsoft's comments about Netscape appeared designed to create doubts about Netscape's ability to compete in the market. Given the power that Microsoft, and in particular,

Mr. Gates, has in influencing the computer industry and analysts, Microsoft's negative comments, as intended, directly affected Netscape's ability to compete effectively. It was not a totally uncommon event for a customer to question whether it made sense to do business with Netscape because of Microsoft's public position that it was going to crush Netscape's business.

116. Indeed, neither Bill Gates nor other Microsoft executives were shy about describing publicly the threat they felt Netscape posed to Microsoft and their intention to eliminate Netscape as a competitor. I became aware of numerous press and other statements from Microsoft executives, including Mr. Gates, in which Microsoft expressly manifested its intent to crush Netscape.
117. On the anniversary of Pearl Harbor Day, December 7, 1995, Microsoft detailed its Internet strategy in a day-long session for press and analysts. During the briefing, Bill Gates announced that Microsoft was "hard-core about the Internet." His company's public plans for storming the market included giving away for free all versions of Internet Explorer (which, of course, competed with Netscape's browser), including versions that ran on non-Microsoft operating systems, and Microsoft's web server (which competed with a Netscape server), and then including them in the Windows operating system and the Windows NT operating system. The Seattle Times, in a front-page article entitled "Microsoft plays Hardball" and subtitled "Game Plan for

Internet: Crush the Competition,” reported that during the briefing Microsoft executives Greg Maffei and Paul Maritz gloated over the \$30 drop in Netscape’s stock price that resulted from the Gates announcement, and reported that another of their colleagues said of the precipitous drop in the stock price, “That’s not enough.” The Seattle Times also reported that, given the 100 million customers of Windows and Windows NT, distribution would be extremely important for Netscape; it quoted one analyst present at the event as saying that Netscape “had better react quickly to find mass distribution for its own Internet-browsing software.”

118. In March, 1996, in response to the combined threat of Java and Navigator, Microsoft attempted to turn the Internet from an open system to a Microsoft proprietary system. For example, ActiveX was Microsoft’s effort to make developers create software and content which bound the Internet to Windows and played a key role in Microsoft’s “Embrace and Extend” strategy. ActiveX was introduced with great fanfare at Microsoft’s first Internet developer conference in March 1996. Microsoft promoted ActiveX as the primary way in which websites should be built.

119. In June of 1996, Bill Gates told the Financial Times of London, that:

Our business model works even if all Internet software is free . . . We are still selling operating systems. What does Netscape’s business model look like (if that happens)? Not very good. (Financial Times of London, June 16, 1996, at 15.)

120. Mr. Gates again made negative comments about Netscape in July of 1996.

Infoworld reported on July 29 that Bill Gates snapped at reporters asking him about developers adopting Netscape APIs. According to the article, Gates made a point to:

position Netscape as a middleware company. He then reminded the assembled press that historically, middleware companies do not last long. Any lead Netscape has, Microsoft hopes to erase or to quote [Gates] 'what part of the fact that Microsoft owns Windows don't you understand?'" (NSC 002005-002006)

121. On August 9, 1996, Microsoft held a briefing for various venture capitalists ("VCs"). Paul Maritz, John Ludwig, Skip Madigan, and Greg Maffei were the Microsoft executives in attendance. Their main points, as reported to me, were that Windows NT and Windows 95 had won in the marketplace, and that Microsoft was shipping Internet Explorer 3.0 with every Win 95 desktop from Q4 1996 forward. They indicated that this strategy would drive leadership for Internet Explorer and Active X against Navigator and Java. They also stated that Microsoft supports Java the programming language, but is directly opposed to Java the OS. I was told that Microsoft indicated that with a client competitive with Netscape's and Internet Explorer bundled into every Win 95 desktop from Q4 1996 on, Microsoft ultimately will win the client war (resulting in 3-4 million more browser seats for Internet Explorer every month). It was pointed out to me that Netscape's brand and user loyalty would be mitigated by Internet Explorer being made part of the Win 95 desktop by Q1-Q2 1997. By winning the client war, Microsoft would

secure dominance for Active X and marginalize Java. (NSC 71544-71545).

122. Although Microsoft now conveniently attempts to blame Netscape's decline in market share on our allegedly bad decisions or management, Microsoft did not always harbor that opinion. In addition to stating over and over again that it intended to crush Netscape, Microsoft on a few occasions admitted the reasons for its fears. Steve Ballmer stated in September of 1996: "Have no confusion in your head: Job one for us right now is the Internet and defeating Netscape . . . [*Netscape is*] *simply our smartest competitor.*" ("Microsoft - On Top for Now - As it Wages War on all Comers, Maintain its Dominant Position?" VAR Business, 9/5/96) (emphasis added).
123. Apparently facing a worthy adversary, Microsoft could not resort to competition in the open marketplace, but rather resorted to using its monopoly to ensure a win. Starting soon after our rejection of Microsoft's June 21, 1995 proposal to divide the browser market, Netscape began hearing numerous reports of Microsoft practices designed to use its monopoly power in the operating system to prevent us from competing in the browser market. These reports are detailed below, based both on my recollection and on my review of Netscape e-mails. Because the pattern had become so pervasive, at some point in time we began keeping track of reports of Microsoft's actions, and thus I am able to recount detail about those instances from our company records.

124. These Microsoft practices included exclusionary contracts that prevent customers from choosing to deal with Netscape, and other efforts to restrict Netscape's access to the channels of browser distribution, such as ISPs, OEMs, ISVs, ICPs and Corporate Accounts. In addition to restrictive contracts, these efforts included not only giving away the browser for free, but also offering compensation that amounted to making it "better than free" in many circumstances. That is, through cash or products or services, Microsoft was paying companies to replace Navigator with Internet Explorer. As set forth below, Microsoft engaged in other predatory acts designed to eliminate Netscape as a competitor, including building into the operating system unnecessary technical incompatibilities with Navigator's browser; and deliberate and critical delay in providing to Netscape technical licenses necessary for Netscape products to work properly with Windows. Examples of each of these types of predatory conduct are discussed below.

125. **Moves to Limit Netscape's Distribution Channels** -- There are several ways Netscape gets its Navigator browser, or client, to customers. These distribution channels include: distribution through ISPs, distribution through OEMs, distribution through ISVs, distribution through ICPs, direct sales to corporate users and consumers, and downloading via the Internet. For home users, the ISP and the OEM channels are by far the most important. Distribution in the other channels is not and cannot be a

substitute. The ISP and OEM channels statistically comprise the two largest distribution channels for all browsers, and those channels are especially important for new users. A user signs up with an ISP specifically for the purpose of getting connected to the Internet. If his or her ISP offers a browser, that user is highly likely to continue to use that browser. Likewise, many consumers purchase new computers just to get connected to the Internet. In this case, the new user is likely to use whatever browser comes already loaded on the computer. Even if a computer purchaser did not buy the computer specifically to connect to the Internet, that individual is likely to use the OEM-installed or bundled browser for the obvious reason that it is there. Adding an additional browser takes more work and, if the first browser can not be removed, uses additional computer memory, as well.

126. Microsoft engaged in many practices designed to interfere with Netscape's ability to distribute its browser in almost all of these channels. Primarily, Microsoft used its operating system monopoly to coerce exclusionary or restrictive contracts with ISPs, OEMs, ISVs, and ICPs. Microsoft also threatened to withhold access to its most precious asset, its operating system, and used its economic power to offer Internet Explorer for free -- and in many instances for better than free.
127. Evidence of these practices in each of the distribution channels is detailed below. In many instances, I was directly involved and personally experienced

Microsoft's use of its power. In other instances, I was informed of Microsoft's practices by my sales force in the normal course of business. In other instances, Netscape was informed of Microsoft's practices by the affected third parties. In yet others, I learned in the press of Microsoft's practices. The press accounts were consistent with what was being reported to me by my employees. It must be stressed and will be seen from the details below that from 1995 to today, I heard reports of Microsoft's interference with Netscape's ability to compete on an almost constant basis. This interference took a serious toll on Netscape.

128. *ISP Foreclosure* — Netscape realized the importance of the ISP distribution channel early in the game, and began signing up ISPs shortly after its first retail release of its browser. Many ISPs, large and small, eagerly embraced Netscape's browser and agreed to distribute it to their customers. In fact, Netscape had over 1000 ISP contracts for browser distribution in 1995 and early 1996. These contracts generally gave the ISP a license to distribute a Netscape browser and provided Netscape revenue from license royalties. Today, due to Microsoft's exclusionary and restrictive licenses, virtually none of our ISP contracts remain in effect as negotiated. Most of the contracts were terminated outright by the ISPs in connection with entering into distribution contracts with Microsoft, and of those that were not terminated, the ISP retains the right to distribute the Netscape browser but without

commitment to pay a royalty to Netscape.

129. Netscape still has many ISP agreements. However, because of Microsoft's exclusionary contracts, Netscape essentially has been unable to distribute its browser through the world's largest ISPs, including AOL, and the effectiveness of distributing the browser through other top ISPs has been severely limited. Although there are thousands of ISPs, over 75% of the world's Internet users access the Net from the 8 to 10 largest players in the industry. ("Consumer Choice in Web Browsers - One Year Later," NetAction, July 7, 1998; "Survey: ISP Deals Favoring IE," CNet, July 1998) I understand that Microsoft entered into exclusive, or restrictive deals with all these ISPs.
130. I understand that Microsoft's exclusionary deals require that as much as 75 to 80% of an ISP's overall browser distribution be Internet Explorer, which is effectively force-feeding Microsoft browsers to customers regardless of their preference. Moreover, I am informed that Microsoft's exclusionary contracts prohibit ISPs from distributing Navigator unless specifically requested by a customer.
131. Netscape has contracts with the Regional Bell Operating Companies ("RBOCs"); but they are not exclusive. Netscape contracts with Southwestern Bell, Pacific Bell, Bell Atlantic, Bell South, and Ameritech require that Netscape be the "default" browser. Three things about these contracts,

however, distinguish them from the Microsoft contracts. First, we only included these default provisions in response, and as a counter, to Microsoft's restrictive contracts, and these provisions sunset if and when Microsoft drops its exclusiveness requirement with AT&T and MCI. The pertinent language reads:

Relationship to Other Browsers. For so long as AT&T and MCI (or any successor to MCI by merger) are both restricted by agreement from providing Navigator to their customers on a par with browsers of Navigator's primary competitor, Company agrees to the following:

Unless specifically requested otherwise by a customer, Dial-Up Kit will be the "default" browser for copies provided in physical media (i.e., floppy disk and CD-ROM) for Company's Internet Service on platforms for which Dial-Up Kit is available (such as Win95, Win 3.1 and MAC). Accordingly as to such platforms, although other client software (such as browsers) may be contained on the same media with which Dial Up Kit is made available, unless the customer has previously otherwise requested, Dial-Up Kit will be the default browser installation.

Company will add the "Netscape Now" button to its web site on highly trafficked pages. Such pages will include links to an ftp location located either on the Company's web site or the Netscape web site, as selected by the Company. The placement and number of pages will not disadvantage Navigator on an overall basis as to links to other browsers.

Browsers competitive to the Dial-Up Kit, and Company customizations to these browsers, may be available from Company web site, but in positions designed so as to not disadvantage Navigator itself on an overall basis.

Once AT&T and MCI (or MCI's successor through merger) are no longer both restricted as provided above, Company, at its sole discretion, is free to continue all, any or none of the restrictions described in Section 15.1 without affecting any other provisions of this Amendment. (NSMS 004819)

132. Second, the Netscape contracts require only that the Netscape browser be set as the "default" browser. There is nothing in the contracts that prohibits the RBOCs from distributing another browser to their customers -- in any numbers. Third, the RBOCs account for less than 5% of the total ISP marketplace.
133. As is detailed below, Microsoft extracted exclusionary contracts from ISPs either by leveraging its monopoly power over the operating system desktop, or by using its economic power obtained through its monopoly profits to offer financial rewards to those that distributed the already free browser product.
134. The largest and most important ISP is AOL. In the fall of 1995, Netscape began negotiations with AOL to incorporate Netscape's browser into AOL's interface. This deal presented a very good distribution possibility for Netscape. Because of the obvious importance of securing distribution through the world's largest ISP, I personally invested a tremendous amount of energy in, and devoted a tremendous amount of Netscape resources to, closing the AOL deal. Netscape and AOL engaged in lengthy discussions about the technical feasibility of embedding the Netscape browser into the AOL system. After a lengthy technical feasibility study, both sides agreed

that the project was technically feasible and could be completed in an appropriate amount of time. One of the issues discussed in the technical feasibility study was AOL's desire for a componentized version of Netscape Navigator to use in its service offering. A componentized browser is essentially a browser that can be used inside another software program. Netscape had committed to componentizing its browser for AOL, and had committed to doing so on a schedule that met AOL's needs.

135. Microsoft was also negotiating with AOL toward the end of 1995. AOL told us that the reason they were negotiating with both companies was their desire to offer browser choice. Excited by the prospect of distribution through AOL, in March of 1996, after a long period of negotiations, Netscape entered into an agreement with AOL that did not provide for any exclusionary arrangement, but rather just a fair chance to let end users choose the browser they preferred. At the time of the agreement, both companies believed that Netscape could meet AOL's technical requirements.

136. The day after Netscape and AOL signed that agreement, AOL signed an *exclusionary* agreement with Microsoft that prohibited AOL from distributing the Netscape browser in any meaningful numbers. Of course, I knew why Microsoft was able to extract exclusionary terms from AOL -- its monopoly power over the desktop. Microsoft succeeded in getting exclusionary terms from AOL in exchange for space on the Windows 95

desktop, such that whenever users turn on their computers, they can access AOL right from the "first screen" or desktop. The fact that Netscape planned to charge for its browser and Microsoft did not, and that Microsoft already had a componentized browser and Netscape would develop one, came up in my discussions with AOL after they entered into the Microsoft deal.

However, Steve Case and David Colburn of AOL confirmed my suspicions, both telling me that they would not have entered into the agreement with Microsoft but for access to the Windows desktop.

137. While there were some subsequent discussions between Netscape personnel and AOL about whether there was any other way Netscape could get its browser onto the AOL system, my understanding was that after AOL signed its exclusive deal with Microsoft, we were effectively shut out of this opportunity at least until that contract expired.

138. The exclusive deal with AOL cannot be brushed aside as a deal with just one ISP. Rather, AOL is by far the largest ISP in the country. Moreover, AOL's members account for over one third of Microsoft's Internet Explorer market share.

139. There are numerous other examples of Microsoft entering into exclusionary deals with ISPs. In March 1996, Netscape learned that after offering free software to an ISP, Microsoft added the following restrictions to the deal: "ISP cannot distribute any Netscape products. ... ISP cannot put anything

Netscape related on their [sic] server. ... ISP must put a 'viewed better with Internet Explorer' tag on their [sic] site." (NSC 001906) My understanding is that Microsoft entered into a variety of exclusionary deals with a number of the largest ISPs, including AT&T, MCI, and Earthlink/Sprint, PSI, NetCom, Compuserve, and MindSpring.

140. As an additional incentive for its exclusionary deals, Microsoft offered to give its browser to ISP's free or "better than free." In January of 1996, internal correspondence between Netscape's Peter Thorp and Ram Shriram, reveals that in negotiations with PSI, an ISP that was interested in licensing Navigator, PSI indicated that "Microsoft is offering to give them the world for free. They really want to do this deal and go with Netscape, but free [is] tough to argue with." (NSC 018811-018812).
141. Not only was Microsoft giving away its software, it was in many cases paying bounties to licensees whose customers signed up for Microsoft's internet services. A March 20, 1996, email from Fred Giordano, then Vice-President for Eastern Sales for Netscape, details a proposal Microsoft had made to Bell Atlantic. Under the proposed terms, Bell Atlantic would distribute Internet Explorer exclusively, would offer free Internet Explorer and Microsoft Network ("MSN") access to all its customers, and Microsoft would pay Bell Atlantic between \$15 and \$45 per sign-up. (NSC 001917)
142. On June 13, 1996 a Netscape sales representative from Northern Europe

reported that Microsoft offered free client product and a marketing fund of \$400,000 to four major European ISP's (Planet Internet of Holland, Demon Internet of the UK, British Telecom of the UK, and Indigo/Dome of Ireland). "This was extended on the understanding that [they] would NOT purchase any [software] from Netscape." He adds that "there are a number of other examples which I could cite, however, these should indicate that we are seeing this type of predatory behavior in all countries with all major service providers." (NSC 001944-001945)

143. In September 1996, Netscape learned about the tactics Microsoft had been using to court Erol's, one of the largest ISPs in the East Coast of the U.S. According to Erol's CEO, Microsoft not only offered Internet Explorer for free, but also "offered to pay 20% of the \$600,000 a month Erol's spends in advertising along with some other attractive incentives he didn't disclose." (NSC 002365)
144. In many cases, even when a potential customer preferred Netscape's technology, they felt forced to choose Internet Explorer because it was free. Danny Shader of Netscape described one such instance in a March 26, 1996 email: "As you know, Metro is establishing an on-line service called MetroNet that may/will be bundled with Vobis PCS. Apparently a manager at Metro named Peter Titz has expressed concern about the price we're asking for the Navigator bundle, and believes that if we don't soften, Vobis

will opt for MS Internet Explorer over Navigator. ... For technology reasons, our partner wants the deal to go Navigator.” (NSC 018869)

145. A message forwarded to many Netscape employees shows how Microsoft was soliciting ISPs to switch to Internet Explorer with the enticing offer of free distribution. The message included a form letter sent to ISPs from Microsoft’s Internet Business Development Group that read, in part: “I would like to have you distribute Internet Explorer for Win 95, Win 3.1 and Macintosh to your customers. We will license those products to you free of charge. I am also offering a copy of Internet Information Server which, I think, you as an ISP will find adds value to your service. The Internet Explorer offers you reduced browser costs, which should help you to differentiate your service, while allowing you to provide your customers with a great browser.” (NSC 005804-005805)
146. AT&T WorldNet was a major ISP and one that Microsoft targeted heavily for an Internet Explorer exclusivity deal. In May 1996, Netscape’s Fred Giordano sent an internal email about AT&T WorldNet: “The AT&T WorldNet agreement term has approximately 4 years remaining. We are competing against MS ‘free,’ as MS is offering the usual terms one would expect them to offer WorldNet (free Internet Explorer, free upgrades, presence on Win ‘95, free advertising space on MS home site, etc.).” (NSC 020298)

147. Even some distributors of Internet software felt that Microsoft's marketing tactics were unfair, despite the short-term advantages they gained. A September 1996 internal Netscape email shows that Gianni Comoglio of Olivetti's Telemedia Group "said that Netscape should take Microsoft to court ... as he felt Microsoft was being unfair in Microsoft's proposal to have Telemedia's ISP service to distribute Microsoft's Internet Explorer for free. He said the agreement ... allows Olivetti to get money in the form of a 'referral fee' each time Explorer is put on a CD that Olivetti distributes. ... Mr. Comoglio's pro-Netscape argument to his marketing management were initially rebutted because of the more attractive financial aspects of Microsoft's proposal." (NSC 019247-019248)
148. Microsoft's practices with regard to ISPs had a direct impact on Netscape. On June 7, 1996, a Netscape account manager sent an email to Netscape's Netsales Regional Sales Manager about ISP accounts he had lost to Microsoft. Inland Valley Internet Services and Source Internet Services were both described as start-up ISPs that chose Internet Explorer over Netscape's Navigator because it was free, even though they would prefer to distribute Netscape. (NSC 001968; NSMS 56733) In addition, at Burlington Air Express, "top management dismissed Netscape because IE is free." Id.
149. In June 1996 Netscape lost a distribution contract with an ISP called Global Telecom. The President of Global Telecom wrote that "Microsoft gave me a

deal I couldn't refuse. Free dialer, browser, developer kit, freely distributable, etc. . . . I know Netscape is better, but \$0 vs \$18K is impossible to beat." (NSC 002417)

150. On August 14, 1996, Netscape learned from Earthlink, a major ISP, that Earthlink was going with Microsoft because of Microsoft's control over the desktop. Earthlink described Microsoft's pressures and tactics as "medieval." Earthlink felt tremendous pressure to reach a deal with Microsoft to distribute Internet Explorer — and to give it preferential treatment — despite the fact that it feared Microsoft and the power it might exert over the Internet industry if it defeated Netscape. (NSMS 57009-57011)
151. In February 1997, Netscape learned that Microsoft had offered a New York ISP, Lightning Internet, free software, free hardware, and free advertising. Microsoft also offered to pay it commissions on sales of future Microsoft NT products. They "were panicked because customers wanted Netscape, but MS was pressuring with freebies, etc. He was pleading for our product free, logo free, and advertising free." Boston Consulting Group, Ultranet, Utilicorp, Eatel, and Clarity Communications are other companies that chose Microsoft because it offered free software. (NSC 015141-015145)
152. Mercury Internet Services wrote to Netscape on September 6, 1997: "We no longer give the Netscape Navigator Software away nor do we sell it. We have not been pleased that we can give away Microsoft's Internet Explorer free

and we have to pay for Netscape.” (NSMS 025058-025060)

153. Bliss Advertising and Design advised Netscape it had stopped distributing Navigator on March 12, 1997. “We have stopped the use, support and distribution of Netscape to our customers,” they wrote. “This was only to keep competitive. We still believe in your product but your direct competitor left us no choice. . . . I sincerely apologize if this is a trend.” (NSMS 005801-005804)
154. Web Services Group, a small ISP, wrote Netscape in May, 1997 to acknowledge they had stopped distributing Netscape Navigator. Jim Gile of Web Services Group wrote that “for a smaller service provider like ourselves, it has become difficult to justify the cost of Netscape (\$20 per copy) as compared to Internet Explorer at \$0.00 a copy. . . . At this point we will no longer distribute any Netscape Navigator software. Thank you for help up to this point. And again, we regret that we have to make this decision and will continue to root for Netscape as it competes with Bill Gates crew.” (NSMS 042728-042731)
155. On September 18, 1997, Doug McClure, Technical Project Leader of Scescape, Inc., an ISP in South Carolina, informed Netscape it had ceased distribution of Navigator. McClure wrote that “your product *is* excellent but totally lacking in marketing support and we could never justify the \$20 setup cost when Microsoft will fly a blimp with our name on it for free. I sincerely wish

Netscape could compete with this but we are getting slammed by these costs, and this is the very thing that will kill your browser, which I incidentally prefer. We held out as long as we could but can no longer bear this tariff.” (NSMS 034507-034511)

156. Mid Ohio Net informed Netscape in early March, 1997, that they were no longer distributing Navigator. Justin Cheen of Netscape called Mid Ohio Net to ask “if they wanted to distribute anymore and they said no way; not when the Internet Explorer is free.” (NSMS 026727-026732)
157. Microsoft’s practices have continued into 1998. In April of 1998, a complaint about Microsoft was posted to a Netscape newsgroup. The author forwarded an email sent to the webmaster of the ISP where he worked. He wrote: “Basically, Microsoft will give you two copies of NT and other software if you force over 500 of your users to use Internet Explorer. Frightening. Is this legal?” Even though Internet Explorer already was free, the e-mail from ecmail1@microsoft.com offered free copies of: Windows NT Server 4.0; Proxy Server 2.0; Windows NT Option Pack for each 500 users of Internet Explorer 4.0. (NSMS 63266-63267).
158. The impact of Microsoft’s ISP licensing practices on consumers has been dramatic. Earlier this year, the consumer group NetAction published a report on “Consumer Choice in Web Browsers.” Based on a June 1998 survey of top ISPs that provide service to consumers, the report stated that “The

disturbing reality is that the four largest retail Internet Service Providers, with a combined subscriber base of over 20 million customers, distribute only Internet Explorer to their customers.” The report makes three additional points relevant to Microsoft’s practices with the ISPs. First, although Microsoft, under pressure from the European Union and the Senate Judiciary Committee in February and March 1998, stated that it would not continue to enforce certain of the exclusionary provisions in its ISP contracts, “the damage had largely been done” by that time. Second, the report finds that with the incorporation of Internet Explorer into Windows 98, there will be increasing disincentive for ISPs to distribute a Netscape browser. And third, the report concludes that downloading browsers from the Internet is not as effective a method of distribution to ISP customers, especially computer novices, as is bundling by the ISP: “While Microsoft defenders note that consumers can download alternative browsers off the Internet, this is mostly a theoretical choice for computer novices, who tend to stick with the software provided by their ISP.”

159. ***OEM Foreclosure*** – Netscape experienced early successes in getting OEMs to distribute the browser with computers. Some computer manufacturers installed Navigator on new machines; others provided Navigator on a CD-ROM included in the box with new machines.
160. OEMs were anxious to enter into agreements with Netscape because it

allowed them to differentiate their machines from those of other manufacturers and to add value for consumers. The OEMs that Netscape dealt with did not express concerns or have any difficulty installing the Netscape products on top of Windows.

161. Starting in 1994, Netscape entered into contracts to distribute Navigator with some of the world's largest OEMs. Netscape's first browser-distribution contract with an OEM was in November 1994 with Digital Equipment Corporation. Then, in 1995, Netscape entered into such contracts with a large number of OEMs, including Acer, Apple, AST, Compaq, Fujitsu, Hewlett-Packard, IBM, NEC, Siemens and Zenith. In 1996, we were able to sign two additional browser-distribution contracts, with Hitachi and Sony, but it was becoming increasingly difficult for us to get effective distribution through the OEMs due to the pressure being brought on them by Microsoft.
162. It was at that time that we began to get widespread reports to the effect that (1) OEMs were required to keep the Internet Explorer icon on the desktop (or lose their Windows license), (2) various financial incentives were offered to OEMs to get them to "prefer" Internet Explorer over Netscape Navigator, including discounts on the operating system and on other software, and (3) subtle and not-so-subtle verbal pressure was put on the OEMs not to have anything to do with us. A couple of OEMs even told us they could not put a "Netscape Now" button on their own home page due to restrictions in their

Microsoft contracts.

163. Further, I was told that senior executives of Microsoft, including Bill Gates, called the CEOs of certain OEMs to warn them that there would be negative consequences resulting from their doing business with Netscape.
164. One such incident occurred after Netscape and Hewlett-Packard announced a joint product marketing arrangement at a press event. We learned from Rick Belluzzo, then of Hewlett-Packard, that both Bill Gates and Steve Ballmer had called Hewlett-Packard after the event and had expressed displeasure over the announcement. I heard similar reports directly from CEOs of other types of businesses, such as Dave Dorman, who received a call from Mr. Ballmer after PacBell Internet Service signed a contract with Netscape. In that call, Mr. Ballmer told Mr. Dorman he had become "an enemy" of Microsoft by doing business with Netscape. This call was subsequently reported in The Wall Street Journal. (10/27/97, "For Microsoft, the Phone is a Potent Weapon," p. B1.)
165. Our salespeople also told me that the OEMs were offered a discount on Microsoft products, including Windows, if they would make Internet Explorer their "preferred" browser, and that certain OEMs that tried to put Netscape Navigator on their machines alongside Internet Explorer learned that they would lose valuable marketing dollars provided by Microsoft if they did so. My salespeople's reports were consistent with press reports that the PC

makers were being pressured by Microsoft. In "PC Makers: Microsoft used Pressure Tactics," reported in PC Week, August 26, 1996, seven different OEMs said Microsoft "used various pressure tactics to emphasize Internet Explorer over Netscape Navigator," including threatening to re-evaluate Windows 95 licensing fees if Netscape Navigator were bundled on their computers, withholding participation in marketing programs if vendors bundled both Netscape Navigator and Internet Explorer, and threatening to raise the Windows 95 licensing fee if Internet Explorer 3.0 were removed from the operating system. Once this Microsoft pressure on the OEMs started, it became much more difficult for us to close any business deals, and particularly business involving our browsers, with the OEMs.

166. The OEM incident that most unsettled me involved Compaq. We had had a very good working relationship with Compaq. In fact, one of Compaq's Vice Presidents, Ronnie Ward, spoke in very complimentary terms about Netscape, the Internet, and Java at one of our developers' conferences. (Interestingly, Mr. Ward later told one of our salespeople that because he had referred to Java during his presentation as "letting the world out of jail," Microsoft had questioned his and Compaq's loyalty to Microsoft and this had upset certain senior managers at Compaq.) In addition, Compaq had agreed to distribute the Netscape Navigator on its popular Presario line, and Compaq personnel were enthusiastic about putting an icon for the Netscape

Navigator on the Presario desktop. At one meeting, a group from Compaq showed some of our employees a preliminary build of the Presario product, happily pointing out that the icon for the Netscape Navigator was on the desktop. However, when the final build of the Presario product shipped in 1995, we found to our amazement and dismay that the icon for the Netscape Navigator was not on the desktop. We learned from a Compaq product manager that Microsoft had not wanted Compaq to put the Navigator icon on the desktop, even alongside the Internet Explorer icon. We also learned that Microsoft had threatened to terminate Compaq's Windows license. This would have put Compaq -- the largest PC OEM in the world -- out of business. This demonstrates Microsoft's unprecedented power. The effect of this pressure from Microsoft was to destroy the value of our contract with Compaq.

167. In 1997 our salespeople tried again to get Compaq to ship Navigator on their Presario line, but they were told by the Presario personnel that they could not work on a new contract with us until over a year later, after they had concluded the renegotiation of their Windows license with Microsoft. They indicated they were sensitive about working with Netscape because doing so in the past had caused friction in their relations with Microsoft. This was consistent with what we had understood from various Compaq personnel, including Compaq's CEO, Eckhard Pfeiffer with whom I met personally and

discussed this during 1996 and 1997.

168. NCR provides an example of Microsoft offering cash discounts on Windows in exchange for adopting Internet Explorer. I understand that Microsoft provided NCR with a "market development agreement" that ties royalty reductions to NCR's putting the Microsoft logo on NCR's homepage, using Internet Explorer, and hotlinking to the Microsoft homepage. I understand that under the agreement NCR is not allowed to modify Windows screens in any way, including deletion of the Internet Explorer logo, or to change the "boot-up" process (to permit it to load Netscape Navigator). We were told that NCR put the Internet Explorer logo on its homepage and, to be fair, put the Netscape logo on as well. We were told that Microsoft then called and said that Microsoft management looks very negatively at NCR putting the Netscape logo there and if NCR wants to partner with Microsoft, NCR should not do that. In addition, after the NCR/Netscape press release in the first week of August of 1996, I understand that Microsoft told NCR that Netscape was Microsoft's number one competitor and that Microsoft and NCR's licensing relationship was going to get a lot harder. In addition, we were told that a Microsoft sales person said that Microsoft has a "revenue maximize" list that includes companies that are less than fully cooperative, and that justifies price differences to these companies because, he said, Robinson-Patman price discrimination restrictions don't apply to software. (NSMS

56979-56980)

169. In addition to the pressure being exerted by Microsoft on OEMs, we learned of other Microsoft practices to restrict our access to the OEM channel. On September 5, 1996, IBM informed Netscape that Microsoft created "new restrictions in the Windows 95 license agreement which prevent any OEM from modifying the default desktop or 'shell.'" This would lock OEMs into Nashville (the Code name for Windows 98) and shut out OEM-specific shells such as the Packard Bell interface, and the IBM Aptiva interface. (NSC 070784-70788)
170. Microsoft threatened PC manufacturers in other ways. Gil Amelio informed Netscape that Apple had to agree to bundle Internet Explorer along with Netscape, because Bill Gates would only develop Office 97 for the Mac OS/Next OS platform if Apple bundled Internet Explorer. (NSC 002202)
171. AST reported that it was very concerned about choosing Netscape Navigator as its browser, because it believed that Microsoft could easily raise the price of the other software programs that AST buys from Microsoft. (NSC 002305)
172. Several OEMs in Japan complained to Netscape that Microsoft threatened that if the OEMs use Navigator, Microsoft would increase the royalty license fee for Windows. (NSC 000150)
173. Today, Netscape has limited distribution agreements with some OEMs. None of these agreements provide effective mass distribution outlets, as all of our

agreements are engineered around Microsoft's restrictions. For example, our contracts are restricted as follows:

- IBM: offers Netscape browser on the Aptiva and ThinkPad lines, but without a desktop icon. As in most cases, Internet Explorer has a desktop icon on those lines;
- Gateway: provides Netscape browser through a separate compact disk;
- Sony: offers Netscape on some limited lines, but without a desktop icon;
- Apple: offers Navigator on the iMac, PowerMacs, and PowerBooks, but without a desktop icon;
- NEC: offers Netscape browser on a CD on one notebook computer;
- Fujitsu: offers Netscape browser with LifeBook notebook;
- Hewlett Packard: offers Netscape browser with Kayak PC workstations (one of its smaller lines);
- The Netscape browser is effectively not distributed at all through the largest OEMs (Dell, Compaq), or on Packard Bell, Acer, Toshiba, or Micron.

174. *ISV Foreclosure* – Independent software vendors have also been an important distribution channel for Netscape software. Specifically, ISVs, who had their own established distribution channels, would agree to distribute our software along with their software. Microsoft has tried to eliminate the ISVs as a meaningful distribution channel for Netscape.

175. In particular, I have experienced Microsoft's ability to use its monopoly power to foreclose our opportunities with an ISV as we tried to negotiate a deal with

Intuit. We expended enormous amounts of time and energy trying to work with Intuit. Intuit needed an embeddable browser for its Quicken product. It had very specific requirements. Intuit needed the ability to display web pages without any of the surrounding user interface elements of the browser. We worked with Intuit for months to determine if our stand-alone browser could provide the user interface it needed. My understanding is that we had offered Intuit several technical options that it agreed would meet its needs. However, despite the progress we were making, I began to suspect that Microsoft was exerting extreme pressure on Intuit. In 1997, Intuit informed us that it felt that it had no choice but to do an exclusive deal with Microsoft.

176. Obviously, we felt that we had come so close to getting the Intuit deal, we were all quite disappointed to not get it. In fact, I instructed Danny Shader, Netscape's Vice President of Development Relations, to prepare an analysis, at the time, to help us think about what we could have done better to get the Intuit deal. As I do at many important junctures in our business, I asked my staff to discuss with me what we did right and what we did wrong regarding Intuit.

177. At the time, some on my team believed that the reason that we didn't get the Quicken deal was because Intuit found Microsoft's engineering solution preferable to ours. Although they were issues, I have never believed that our product or engineering design were the primary issues in the Intuit deal.

178. My understanding is that Microsoft coerced Intuit into adopting its technology. Intuit later informed us that Microsoft was offering the inclusion of Quicken code into Windows and the display of Quicken.Com on the desktop. I believe Microsoft's unique ability to place Quicken on the Windows desktop and the vast opportunity that access to the monopoly desktop would give Intuit was the reason Intuit went with Microsoft.
179. My conclusions with regard to Intuit are not surprising given the other stories I was hearing at the time. I learned that Microsoft threatened Attachmate in 1996, after Microsoft learned Attachmate was planning to release a "TCP/IP gateway product that was directly competitive with a Microsoft product. They also learned that Attachmate was bundling the Netscape Navigator with their various products. ... Microsoft therefore contacted Attachmate and told them that Microsoft would start bundling 3720 emulation software (directly competitive with Attachmate's emulation software) into the operating system unless Attachmate took the following actions: (1) cease working on the TCP/IP gateway, and (2) stop distributing NN. ... As a result of these threats, Attachmate has stopped all work on the Gateway project. ... In addition, Attachmate will no longer distribute NN." (NSMS 57057)
180. Quarterdeck was an ISV that considered Navigator technically equal, if not superior, to Internet Explorer, but was dissuaded by the price difference. A

Quarterdeck VP wrote to Ram Shriram: "We are considering Microsoft Internet Explorer and Netscape Navigator. There is no question that Navigator is at no disadvantage on the features checklist. However, we do need for the economics to make sense as well given the competitive nature of the Internet space." (NSC 019014-019015)

181. **ICP Foreclosure** – Internet Content Providers also provide a meaningful method of distribution for Netscape. Netscape started its "Netscape Now" button campaign in 1995. The "Netscape Now" button is what content providers put on their web pages to facilitate download of Netscape Navigator or Communicator. While this means of distribution is nowhere near as beneficial as the OEM and ISP channels because of the limitations on downloading discussed below, it is still an important means of distribution. In this channel, Microsoft also offered ICPs "better than free" terms to enter into exclusionary deals with Microsoft. Even more importantly, Microsoft again offered desktop placement in exchange for exclusionary deals. Specifically, Microsoft targeted some of the nation's most popular sites with desktop placement through its "channel bar" in exchange for its exclusionary deals.
182. One significant example comes to mind: Disney. Disney.com is one of the most popular sites on the Web. In exchange for placement on the Windows 95 channel bar, Microsoft was able to extract an exclusionary deal with

- Disney. Netscape had been in negotiations with Disney to place Disney.com on our "Netcaster" channel bar that existed at that time. Disney had expressed, quite naturally, interest in the broadest possible placement of Disney.com; it would obviously be in Disney's interest normally to be placed on more than one company's channel bar. However, as we were concluding contract negotiations with Disney, it became clear to my team that Disney was likely to sign an exclusionary deal with Microsoft. Disney told us they would have liked to do a deal with Netscape, but as a condition of their Microsoft contract for placement on the Windows desktop, Disney was prohibited from offering Netscape compensation of any kind! Disney would also have been prohibited from promoting, even informing customers, or even letting us promote, the Disney.com placement on Netscape's products.
183. Microsoft was able to extract other exclusionary deals. In August 1996 the popular web site ESPN Net Sportszone refused to display the "Netscape Now" button on its site. According to an e-mail by Barbara Gore of Netscape, "that refusal was because of the contract they have with Microsoft. Brian will email us on the exact wording they are using, something like 'recognized revenue' they are providing to ESPN for their deal. (They are BUYING content providers!, to be exclusive with them.*)" (NSC 070693-070694)
184. CNet started a web site in 1996 called "download.com," for which it was selling advertising during that year. Bill McGee of Netscape's advertising

agency reported in September: "When I asked about the availability of the button for Netscape, I was told that Microsoft had made a substantial commitment to download.com, in particular, and CNet, in general, which included 'browser exclusivity' on these download buttons - other companies such as RealAudio and Macromedia would be able to purchase buttons, but no one offering a browser." (NSC 012079)

185. An internal Netscape email from January 1997 relayed a conversation with Allen Loren of American Express. Loren told Kristofer Younger of Netscape: "We went with Microsoft not because of their technology, because yours is better, but because they could be a better distribution channel for me. I can put my stuff on every copy of Windows 95 or 97 or whatever." (NSC 015042)
186. Microsoft also provided compensation to content providers to promote and distribute its free product. In July 1996 Netscape employees received a report that Microsoft was "approaching large web sites that charge for portions of their content ... offering to subsidize the cost of paid-for content, if end-users are using Internet Explorer to access that content." (NSC 002048)
187. A January 1997 internal Netscape email discussed Microsoft's marketing tactics with Intelligent Electronics, a Colorado distributor that allows resellers to order products directly from the Internet. Intelligent Electronics told Netscape that "Microsoft offered ... free product and \$100,000 to develop the system with Microsoft BackOffice. In exchange he would have had to

agree to run the system exclusively using MS BackOffice and Internet Explorer, and he would have to advertise on his website that the site was powered with MS BackOffice.” (NSC 002345)

188. An August 15, 1996 email revealed a case in which Microsoft offered cash to a company that planned to customize its web site toward Microsoft technology on an exclusive basis. Jonathan Shapiro of United Media, the distributor of the Dilbert cartoon strip, “said that Microsoft offered them money and promotion in exchange for customizing to Microsoft’s technology on an exclusive basis.” (NSC 002162)
189. A June 1996 internal Netscape email about Toys R Us reveals that the toy company at that time was planning a major overhaul of its web site, and Microsoft was very aggressive in trying to get adoption of Internet Explorer technology. Microsoft offered Toys R Us several hundred thousand dollars worth of free consulting in exchange for the company using Internet Explorer technology. (NSC 001835)
190. Microsoft was pushing the display of the Internet Explorer logo very strongly to web sites in Europe. A form email from Microsoft made the following offer: “In return for your displaying the Internet Explorer Logo on your site, Microsoft UK will send you a *free* copy of the ‘Mastering Internet Development with ActiveX Technologies’ CD worth 79 pounds. What’s more, your site will be listed on the Microsoft UK web site.” (NSC 005845-005847)

191. ***Corporate Account Foreclosure*** – Corporate customers are very important to Netscape. Direct sales to such customers resulted in a substantial portion of our revenue. Microsoft interfered with Netscape's direct sales efforts to Corporate Accounts through direct pressure, leveraging the power of its operating system monopoly, and again, free and better than free offers.
192. Netscape was trying to enter the corporate Intranet market in 1996. Corporations use intranets for internal communications, and the browser is an essential component to these systems. According to Mark Tyler of Netscape, Microsoft was doing everything it could to keep Netscape out of the market. "Acer Computer in Taiwan is our first real Intranet deal ... or at least it would be if Microsoft weren't trying to keep us out at any cost. They have given Acer a killer price on an upgrade to Win95 from Win 3.1 if they will use Internet Explorer exclusively and not Netscape Nav. ... A win is doubtful. How low can we go in price to counteract a free browser, and an upgraded operating system at a dirt low price?" (NSMS 56766)
193. In the fall of 1996, KPMG Peat Marwick ("KPMG") tested the intranet products offered by both Netscape and Microsoft. After KPMG completed this evaluation, I was informed that Netscape won the technical comparison and that KPMG had selected Netscape to develop its intranet for its U.S. offices. KPMG also agreed to help many of its large corporate clients install Netscape intranets, which could have helped to increase browser distribution.

Netscape was paid in full upfront and the deal was announced on January 24, 1997.

194. In response to that announcement, I understand that Jeff Raikes, the head of sales at Microsoft, immediately contacted KPMG vice chair Roger Siboni.

After a February 1997 breakfast meeting between the two of them, Mr.

Siboni contacted me to inform me that KPMG was reevaluating our systems.

Mr. Siboni told me that in March Microsoft invited Mr. Siboni and his information technology group to Microsoft's executive briefing center in Redmond, Washington where they had a forty-five minute meeting with Bill Gates. I understand that while Mr. Siboni was in Redmond, Microsoft made a proposal to partner with KPMG in electronic commerce and the automation of sales force procedures so that both companies could better compete with IBM and Oracle.

195. I understand that KPMG and Microsoft still had problems reaching an agreement, because KPMG operated a mix of Windows 95, Windows 3.1, and Macintosh systems, much of which would be incompatible with the Microsoft intranet services. Implementing Microsoft's products would require a full software and hardware upgrade. Netscape, on the other hand, offered a cross-platform solution at a lower total price. In addition, I understand that there was skepticism within KPMG on whether Microsoft would be able to meet KPMG's deadline. Thus, on June 2, 1997, Mr. Siboni called me to say

that it appeared that Netscape would again win the contract, but he asked me to remain quiet so that he could explain the decision to KPMG's foreign partners and could inform Microsoft.

196. In response to KPMG's rumored decision to use Netscape software, I understand that Microsoft agreed to include KPMG in a "rapid deployment" program that would give it early access to Microsoft's software and promised to speed up work on Macintosh compatible versions of its software. Mr. Raikes also offered further discounts if KPMG implemented Microsoft's system globally. Microsoft then offered to buy a 10% stake in Enterprise Integration Systems, a KPMG group that resells networking technology. Microsoft offered \$10 million dollars to cover most of the start-up costs of a new KPMG unit that would sell services implementing Windows NT. Some of this investment would be repaid from future revenues of the Windows NT unit, while the remainder (for promotional and marketing expenses) would not have to be repaid. Finally, Microsoft agreed that if it missed its implementation deadline, it would forgive a greater part of the investment in the Windows NT unit.
197. KPMG accepted this deal with Microsoft. On July 15, 1997, Mr. Siboni called to inform me that the agreement with Netscape would be rescinded. This was shocking to me, given the investment KPMG made in Netscape products and the commitment I thought we had with them.

198. Other Netscape documents provide further examples of Microsoft interference with Netscape browser distribution to Corporate Accounts. Cate Townsend, an information services officer at a company that licensed Internet Explorer, wrote to Microsoft in late January, 1996, to determine whether the company's Microsoft license agreement restricted its right to distribute another browser. Jeff Tran of Microsoft's Internet Explorer Team responded that "you must distribute Microsoft Internet Explorer V. 2.0 as the only browser for Win95 users. If you plan on distribution to Win3.1 or Macintosh users another browser may be distributed, however the beta version of MSInternet Explorer [is] available for Win 3.1 and Mac users to download off our website." Townsend later forwarded these two e-mails, along with the relevant language from the company's Internet Explorer license agreement, to Netscape. (NSC 002124-002125)
199. A different approach by Microsoft was seen in New Zealand, where Microsoft offered to upgrade Telecom New Zealand's 9000+ Win 3.1 terminals to Windows 95 for free if Telecom would use Internet Explorer as its internal browser. (NSC 001948)
200. An email to Netscape from a small microbrewery in June, 1996 prompted the concern of Netscape's Judy Logan. Here was a "relatively small site" being given "free exposure in print advertising" by Microsoft; in addition, "Microsoft has offered \$1000 of free software, Microsoft has guaranteed co-marketing

activities for the next year,” and “an explicit term of the agreement is to remove any reference to Netscape from their site.” (NSMS 56772)

201. Netscape saw much growth potential in international corporate markets by 1996. After visits to Netscape’s major accounts in Brazil, Netscape learned that Microsoft was visiting all the same companies and offering the following: “pay \$1.00 to take each navigator out of the account”; “support and provide all of their products and give mktg dollars to support vendors in trade shows, conferences etc”; “give MS Explorer for free for 2 years”; “work with the key accounts to do whatever they can to promote MS’s products (i.e. mktg dollars, MS resources at shows etc)”; “give free servers and Explorer to banks.” (NSC 019334)
202. In July 1996 representatives from Microsoft met with International Paper, hoping to license its Internet/Intranet software. In the aftermath, John Pullen of International Paper wrote to Netscape: “Unfortunately, the fact that they are offering us all of their Internet/Intranet software (with the exception of say an Exchange server and some tools) for free is a big obstacle for Netscape. That ‘free’ word happens to pull a lot of weight around here. We need to get you guys to come up with something pretty soon so that we don’t end up getting sucked into MS’s web.” (NSC 002015)
203. A July 31, 1996 internal Netscape email reported a comment from an employee of QVC, the substance of which was that QVC was “using

Microsoft's IIS and Explorer because MS paid them 'a whole lot of money' in a big deal they did together." (NSC 002017)

204. An August 8, 1996 internal Netscape email states that Microsoft, in response to a marketing package whereby BTG was including the Navigator browser on 32-bit Windows systems shipped to federal agencies, informed BTG that "they would drop the price for Win 95 and/or NT if MSInternet explorer were configured instead of Netscape Navigator." (NSMS 56981)
205. **Other Microsoft Conduct Aimed at Eliminating Netscape as a Competitor** – Other conduct by Microsoft has substantially impaired Netscape's ability to compete. Most notably, Microsoft has delayed entering into licenses of essential Microsoft code necessary for Netscape to innovate or develop products to work with Windows. Moreover, elements of Microsoft code have created unnecessary technical problems or conflicts in several instances for our rival browser.
206. Microsoft has delayed providing technical information to Netscape or entering into licenses of essential Microsoft code, in some cases with the effect of delaying product development or release or foreclosing us from doing business with certain ISPs.
207. For example, in 1996, we began trying to license a scripting tool for Windows 95 dial-up networking, which we hoped to include in new versions of Personal Edition and Dial-Up Kit. This tool was especially important to us because

some ISPs, but not all, required scripting. At that time, accessing the Internet was not as easy as it is today. Our goal was to make Internet access as easy as possible for persons using our browser. If we did not have the scripting tool, it was very difficult for computer users with our browser to access the Internet through some ISPs.

208. Despite our repeated requests over the next few weeks, Microsoft took no action on the matter. We believed that the scripting engine was readily available. John Freeborg, a Netscape employee, confirmed that fact by making up the name of an ISP and getting on Microsoft's ISP mailing list, using his home address. On June 28, 1996, Freeborg received a packet from Microsoft explaining that the scripting engine we were requesting was available to ISPs for redistribution on a royalty-free basis if the ISP signed a Microsoft license that, among other things, required the ISP to use Internet Explorer as the "preferred web browser," issue a press release announcing the licensing, and use the Internet Explorer logo. (NSC 005813)

209. By mid-July, both Netscape's legal department and Microsoft's legal department had approved the licensing agreement under which we sought the scripting tool. Rick Schell signed the agreement on Netscape's behalf on July 18, 1996. The agreement was forwarded to Microsoft for signature.

210. Microsoft had not signed the agreement by July 25, 1996. On that day, Freeborg again spoke to Ed Mitchell of Microsoft, conveying our great

- frustration about Microsoft's delay in signing the license agreement and in failing to provide us with a scripting tool that Microsoft was already freely distributing to ISPs. Freeborg asked Mitchell for a commitment that Microsoft would sign the license agreement that week. Mitchell refused. (NSC 000176) Meanwhile, Netscape got numerous complaints that we were not distributing this tool that was already widely available. (NSC 002007)
211. Mitchell subsequently informed Freeborg that Brad Silverberg, Microsoft's Senior Vice President Personal Systems Division, had some concerns over Netscape's licensing of the scripting tool. Freeborg and Julie Herendeen, another Netscape employee, attempted to contact Silverberg but were unsuccessful. By e-mail to Silverberg, Freeborg again expressed Netscape's desire to speed up the licensing process and asked if there were any specific issues Netscape could address in order to expedite Microsoft's execution of the license. (NSC 000177)
212. On August 14, 1996, Freeborg and Herendeen spoke to Will Poole of Microsoft. Poole advised them that Microsoft's Paul Maritz had written a letter to Rick Schell listing a number of open issues between Microsoft and Netscape (one of which was the scripting license) on which Microsoft felt both parties could be more cooperative. Poole said that Microsoft was unwilling to discuss the scripting license as a separate issue. (NSC 000181)
213. Because Microsoft refused to address the issue separately -- without Netscape

being more "cooperative" on other issues -- we were never able to license the scripting tool. Although Netscape and ISPs were eventually able to work around this problem, Microsoft's refusal to license the scripting tool to us -- a tool that was freely available to others for redistribution on a royalty-free basis -- effectively foreclosed Netscape for a period of time from doing business with those ISPs, such as Sprynet, that required scripting. In that interval, Microsoft signed a number of deals with those same ISPs making Internet Explorer the "preferred" browser.

214. In addition, Netscape has discovered and been informed of numerous technical incompatibilities that appear to have been designed to prohibit access to certain information by Netscape users. On June 10, 1996, I was informed that Microsoft Developers Network (which provides information to software developers about Windows so that developers can ensure that their applications are compatible with Windows) required the presence of Microsoft Internet Explorer to be fully functional. It would not function with the computer user's preferred browser. (NSC 001967)
215. On August 13 1996, Netscape discovered that users attempting to visit the site at the URL <http://home.microsoft.com> with a Netscape Navigator were denied access. To obtain access, the user needed Internet Explorer. (NSC 0002092-002093). Microsoft later corrected this in response to press accounts.

216. We also learned of other technical problems and conflicts from persons outside the company, most notably Netscape customers who were having difficulties using our product because of conflicts created by Internet Explorer or other Microsoft products. For example, in November 1996, Netscape was informed by a customer who had upgraded to NT 4.0 Server, and installed the accompanying IIS 2.0 Microsoft server (replacing Netscape's IIS 1.0 server), that the immediate result was that any user surfing to the customer's web site with a Netscape browser was challenged to enter a user name and password, and then was given an "access denied" message. That user was denied access even if he or she had a valid name and password with full administration privileges. The customer then searched the Microsoft web site looking for some kind of help. He found a document that mentioned this problem and improperly attributed it to the inability of "Netscape browsers [to] properly handle an NT challenge/response." (NSC 001665)
217. In December 1996, Michael Hawkins, a Netscape OEM & Strategic Technical Support Engineer, was informed by an ISP that had just installed a Microsoft NT server running Microsoft IIS about a problem using Netscape Navigator. Apparently, all of the ISPs who used Internet Explorer could use the server product, but Netscape Navigator users could not successfully log in at all. Hawkins called the customer and discovered that by specifying "basic text" on the server's access control setting, rather than following Microsoft's

recommendation, all users could access the IIS server regardless of the browser used. (NSC 002204-002208)